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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. Serial No.: 10/800,932

Group Art Unit: 3671

Filing Date: March 15, 2004

Examiner: Addie, Raymond W.

Applicant(s): STRASSMAN, David R.

Attorney Docket No.: 14208.004

Title: ASPHALT SEAM HEATER

RESPONSE TO SEPTEMBER 14, 2005 OFFICE ACTION

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

Following is a Response to the Office Action dated September 14, 2005, the time period for response thereto being set to expire October 14, 2005, Applicant provisionally elects with traverse, Group I, Claims 1-12.

REMARKS

Restriction is proper only if the restricted claims are independent or patentably distinct and there is no serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion of patentable distinctness between the restricted claims (MPEP §803). Applicant respectfully traverses the Restriction Requirement on the grounds that the Office has not carried the burden of providing any reasons and/or examples to support the conclusion that the claims of the restricted groups are, in fact, patentably distinct.

Citing MPEP §806.05(c), the Examiner states that the claims are related as combination and subcombination. The Office goes on to note that inventions in this relationship can be shown to be distinct if: (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability; and (2) that the subcombination has utility by itself or in other combinations. In the present case, the Examiner has noted that the asphalt heater as recited in claims 1-12 does not require the particulars as recited in claims 13 and 14. The Examiner goes on to note that the asphalt heater recited in claims 13 and 14 has separate utility